IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos. 23537 and 23608 of 2001

WRIT PETITION NO : 23537 of 2001

Between:

1 The Toddy Cooperative Society,

Rep.by its President P.Nagaraj, S/o.Mallesh
Tummabowli (V), Saroornagar, R.R. District.
R/o.Tummabowli (V), Saroornagar Mandal, R.R.District.

2 The Toddy Cooperative Society,

Rep.by its President P.Pochaiah, S/o.late Venkataswamy
Mansoorabad (V), Saroornagar Mandal, R.R. District.
R/o.Mansoorabad (V), Saroornagar Mandal, R.R.District.

..... PETITIONERS

AND

The Prohibition and Excise Superintendent,
O/o.The Prohibition and Excise Superintendent, Narayanaguda,
Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the Proc.No.CR.No.E5/C/2687/2000 dt.27-11-2000 as

illegal with a direction to the Respondents to adjust the rentals paid during the suspension period by the petitioners Societies from 6-4-2000 to 24-6-2000 towards the rentals payable by the petitioners Societies in the future months rentals.

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WRIT PETITION NO : 23608 of 2001

Between:

The Toddy Cooperative Society,

Mayurkunj Village, Saroonagar Mandal, Ranga Reddy District.
Rep by its President B.Srinivasa Goud, S/o Narayana

Age: 27 Occ: Tapper R/o Mayurkunj Village,
Saroonagar Mandal, Ranga Reddy District.

..... PETITIONER

AND

The Prohibition & Exercise Superintendent
O/o Prohibition & Exercise Superintendent Narayanaguda,
Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent in insisting for payment of rentals for the suspension period from 8.9.2000 to 22.1.2001 as illegal with a direction to the respondents not to collect Rental from the Petitioner society for the period from 8.9.2000 to 22.1.2001 during which licence was suspended.

Counsel for the Petitioner: MR.M.V.S.SAI KUMAR

in both the writ petitions.

Counsel for the Respondent: GP FOR PROHIBITION & EXCISE

in both the writ petitions.

The Court made the following :

COMMON ORDER:

These two writ petitions are filed by the Toddy Tappers Cooperative Societies. The licences issued to the petitioners-societies were suspended by the competent authority, pending further enquiry into the allegation that the petitioners adulterated toddy that was being sold in their shops. However, after obtaining the chemical analysis report of the second sample bottle, the licensing authority issued proceedings revoking the suspension order. Therefore, the petitioners approached the authority for granting remission of the monthly rentals for the period during which the licences were suspended, in vain. Therefore, they filed the present writ petitions seeking a direction to the respondent to grant remission for the period during which their shops were not allowed to be operated due to suspension orders.

Learned counsel for the petitioners placed strong reliance on the judgment of the learned Single Judge rendered by my learned brother Justice V.Eswaraiah, in **Kallam Subba Reddy v. Government of Andhra Pradesh**. In the said judgment his lordship took a view that if the order of suspension is subsequently declared illegal and the authorities rectified the mistake, the licensee is entitled for refund/remission of the licence fee. Relevant observations made by his lordship are as under.

> …In the instant case, no doubt, there is no such order of closure under Section 20 but the suspension order was found to be illegal by the licensing authority himself and revoked the suspension order. As the ground on which the suspension was made is subsequently found as incorrect, and therefore, it cannot be said that the suspension order is legal. As per the Scheme of the Act and the Rules made thereunder, the licenses are granted for a period of 12 months on the payment of fixed amount of the rental and the licence fee relatable for the 12 months and if the licensing authority prevents the

> licensees from carrying on their business by reason of illegal suspension, suspending the privilege granted in favour of the individual to carry on the business and that privilege is restored by revoking the suspension orders, the licensee are entitled for the refund of the rental as well as the licence fee for the period during which the shops were remain closed on account of illegal suspension of the privilege granted in favour of the licensees.
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> 14. Admittedly, there is no fault on the part of the licensees causing for the suspension of the licensees but the suspension of licences were made purely on the fault committed by the Excise Authorities. For the fault of the Department, the licensees cannot be penalized. The authorities rectified their mistake and restored the licenses but denied to grant the proportionate amounts payable for the suspension period, and therefore, I hold that the action of the respondents in refusing to grant remission of rentals and licence fee is illegal and contrary to Rule 33 of the Rules, 1993.

These writ petitions are vehemently opposed by the learned Government Pleader contenting that there is no provision in the A.P.Excise Act, 1968 (for short 'the Act') or the A.P. Excise (Arrack & Toddy licences General Conditions) Rules, 1969 or the A.P. Excise (Tapping of Trees and Toddy shops-Special Conditions of Licence) Rules, 1969. She also placed reliance on the unreported judgment of the Full Bench of this Court in W.P.No.15904 of 1994, dated 17.03.2005 in **S.L.V.Wines v. State of A.P.**

With the assistance of the learned counsel for the petitioners, this Court has gone through the relevant provisions of the Act. Except Section 20 of the Act, there is no other provision under which a licensee can claim remission or refund of licence fee. Further Section 31 of the Act, which deals with the power of the Excise authorities to cancel or suspend licence, in Sub Section (3) provides that the holder of a licence shall not be entitled to any compensation on its cancellation or suspension or to the refund of any fee paid to the Government. Therefore, the judgment of this Court in **Kallam Subba Reddy**'s case (supra) cannot be treated as a binding precedent.

In **S.L.V.Wines**'s case (supra) the Full Bench considered the question whether the licensee is entitled to any remission for the period during which the licensed premises was suspended. The question was answered in the negative, holding that no licensee can claim remission when the shop is closed during the period of suspension. After referring to the provisions of Section 31(3) and following the decision of the Full Bench of this Court in **Sri Narasimha Wines v. Prohibition and Excise Superintendent** to which I was a member, the writ petition for remission was dismissed. The following relevant observations are apt and require to be extracted.

> A bare perusal of the above provisions shows that the licensee whose licence has either been cancelled or suspended is not entitled to any compensation nor to the refund of any fee paid or deposit made in respect of the licence, which constitutes the excise revenue to the State…
>
> Adverting to sub-rule (9) of Rule 25 of the Rules, 1970, a Full Bench of this Court in Sri Narasimha Wines case (referred to supra) held in para 24 thus:
>
> "The matter relating to remission has been provided

> for by the State in exercise of its rule making power itself, which can neither be said to be unjust or arbitrary, no writ of, or in the nature of, mandamus can be issued directing the respondents to grant remission for the period during which no business was carried on."

The Full Bench Judgment, in our considered view, squarely covers the situation obtaining in this writ petition. In view of the authoritative pronouncement made by a co-equal Bench of this Court in Sri Narasimha Wines case (referred to supra), no writ of mandamus can be issued directing the State Government to grant remission. The said Judgment of this Court has not been placed before either of the Division Benches of this Court. Therefore, we have no doubt in our minds that the petitioner is not entitled to any remission as claimed by him.

In view of the decision of the Full Bench in **S.L.V.Wines v. State of A.P.** (supra), the decision of the learned Single Judge in **Kallam Subba Reddy**'s case (supra) is of no assistance to the petitioners, as the same cannot be treated as precedent any more. The writ petitions are devoid of merits and are accordingly dismissed with costs.

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(V.V.S.RAO, J)

01.07.2005

Note: L.R. copy to be marked.

B/o.

vs

To

One fair copy to the Hon'ble Mr. Justice V.V.S.Rao (for his lordships kind perusal)

1. The Prohibition and Excise Superintendent,
   O/o.The Prohibition and Excise Superintendent, Narayanaguda,
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H.Ct.F.No.72-A

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH, AT HYDERABAD.

WRIT PETITION No.23537 of 2001

MEMORANDUM OF COSTS

Respondents (1) costs Rs. Ps.

Stamp for Vakalatnama … … 05 . 00

Advocate's Fee … …

Translation and Printing Charges … … 200.00

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To be paid by the petitioners to the respondent 205.00

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In words: Two hundred and Five only

Deputy Registrar

(To be attached to the order, dated 01-07-2005 and made in W.P.No.23537 of 2001 and dispatched on

H.Ct.F.No.72-A

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH, AT HYDERABAD.

WRIT PETITION No.23608 of 2001

MEMORANDUM OF COSTS

Respondents (1) costs Rs. Ps.

Stamp for Vakalatnama … … 05 . 00

Advocate's Fee … …

Translation and Printing Charges … … 100.00

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To be paid by the petitioner to the respondent 105.00

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In words: One hundred and Five Only

Deputy Registrar

(To be attached to the order, dated 01-07-2005 and made in W.P.No.23608 of 2001 and dispatched on

ASSISTANT REGISTRAR